

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

HAROLD M. BILLITER,

Petitioner,

v.

**CIVIL ACTION NO.: 3:17-CV-22
(GROH)**

RALPH TERRY,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge James P. Mazzone. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed R&R. Magistrate Judge Mazzone issued his R&R on July 15, 2021. ECF No. 57. In his R&R, Magistrate Judge Mazzone recommends that the Petitioner’s § 2254 petition be dismissed with prejudice and the Respondent’s motion to dismiss for failure to exhaust administrative remedies be terminated as moot.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of the magistrate judge’s findings where objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge to which no objection is made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and of the Petitioner’s right to appeal this Court’s Order. 28.U.S.C. § 636(b)(1); Snyder v.

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to Magistrate Judge Mazzone's R&R were due within fourteen plus three days of service. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Petitioner accepted service on July 19, 2021.¹ ECF No. 61. To date, no objections have been filed. Accordingly, this Court will review the portions of the R&R to which the Petitioner objects de novo and the remainder of the R&R for clear error.

Upon careful review and thoughtful consideration of the R&R, it is the opinion of this Court that Magistrate Judge Mazzone's Report and Recommendation should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. ECF No. 57. Accordingly, the Petitioner's § 2254 petition is **DISMISSED WITH PREJUDICE**. ECF No. 1. The Court further **ORDERS** that the Respondent's Motion to Dismiss based on failure to exhaust administrative remedies [ECF No. 20] and the Petitioner's Motion for Leave to Amend [ECF No. 59] be **TERMINATED** as **MOOT**.

This matter is **ORDERED STRICKEN** from the Court's active docket.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** the Petitioner a Certificate of Appealability, finding that no juror "would find it debatable whether [this Court] was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The Clerk of Court is **DIRECTED** to mail a copy of this Order to the Petitioner by certified mail, return receipt requested, at his last known address as reflected on the

¹ On August 4, 2021, the Court granted the Petitioner's motion for an extension to file his objections to the R&R, making his objections due August 25, 2021. ECF No. 63.

docket sheet.

DATED: August 25, 2021



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE